UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

10 ROADS EXPRESS, LLC [1/]

Employer

and **Case 09-RC-272599**

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 651

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

The sole litigable issue in this case is whether the petitioned-for unit is appropriate under the Board's traditional community-of-interest standard, or whether the smallest appropriate unit must include additional employees. 10 Roads Express, LLC ("Employer") is engaged in providing interstate transportation of freight under contract with the United States Postal Service, including in Lexington, Kentucky ("Lexington"). International Brotherhood of Teamsters Local 651 ("Petitioner") filed a petition with the National Labor Relations Board ("Board") under Section 9(c) of the National Labor Relations Act ("Act") seeking to represent two truck drivers employed by the Employer who operate out of the United States Postal Service facility located at 1088 Nandino Boulevard in Lexington. In response, the Employer contends that the smallest appropriate unit must also include six additional truck drivers operating out of a different location in Lexington. The Petitioner asserts, however, that the petitioned-for unit is presumptively appropriate and has meaningfully distinct interests apart from the six truck drivers operating out of the separate location. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

A hearing officer of the Board held a hearing in this matter by videoconference on March 4, 2021, [2/] at which the parties were given the opportunity to present evidence and to state their respective positions on the record prior to the close of the hearing. Both parties filed post-hearing briefs. As explained below, based on the record and relevant Board law, I agree with the Employer that the smallest appropriate unit must also include the six additional truck drivers that operate out of a separate location in Lexington, as the petitioned-for drivers do not share a community of interest that is meaningfully distinct from the six additional drivers. Because the Petitioner has expressed a willingness to proceed to an election in any unit deemed appropriate, I hereby direct an election in the unit found appropriate, conditioned on the Petitioner having or making an adequate showing of interest in the unit as directed.

[1/] The Employer's name appears as corrected by stipulation of the parties at the hearing.

[2/] Hereinafter, all dates occurred in 2021, unless otherwise noted.

II. FACTS

a. General overview of the Employer's operations and job duties of the truck drivers.

The Employer contracts with the United States Postal Service ("Postal Service") to provide it mail and freight hauling services. As part of its operation, the Employer currently employs eight truck drivers ("driver," "truck driver," or "tractor trailer driver") in the Lexington area that are involved in hauling mail and freight pursuant to several employer contracts with the Postal Service. The Postal Service sets the transportation schedules and the Employer is free to determine how to operate its equipment and personnel to meet those predetermined schedules.

The Employer operates three contracts out of Lexington for the Postal Service: contract 405L2, contract 274L3, and contract 450Y1. There are two transportation routes associated with contract 405L2: One originates at the Postal Service's Lexington Production and Distribution Center ("P&DC") and ends at the Chicago, Illinois O'Hare International Airport; and the other originates at the Evansville Processing and Distribution Facility ("P&DF") and ends at the Chicago, Illinois Service Transfer Center ("STC").

Contract 274L3 has several associated transportation routes beginning at various postal service locations in North and South Carolina and ending at several different postal service facilities in Indianapolis, Indiana, including the Indianapolis STC. Finally, contract 450Y1 also has several associated transportation routes that operate between two postal service locations in the Cincinnati, Ohio area and locations in North and South Carolina.

As will be discussed in more detail below, the record reflects that the two drivers in the petitioned-for unit begin their routes from 961 Primrose Court, Lexington ("Primrose Court"), a cul-de-sac directly adjacent to the Lexington P&DC. One of these petitioned-for drivers (Driver #1) is assigned to the 450Y1 contract, which is scheduled to run from 7:30 a.m. to 6:30 p.m., Tuesday through Sunday. His hours often vary from the scheduled contract hours, depending on when his container arrives at the Lexington P&DC. His tractor is parked at Primrose Court after every shift. When he arrives for his shift, after logging in using the Employer's on-board electronic log system, he "bobtails" his tractor into the Lexington P&DC to hook up to his assigned trailer that has already been dropped in the yard.

Driver #1 then proceeds on his assigned route to Fletcher, North Carolina where he meets another employer truck driver at the Mount Energy truck stop at exit 44 on I-26. [3/] Driver #1 drops his trailer, as does the driver meeting him, and they switch trailers. The driver that he meets in Fletcher hauls the trailer that he dropped back to the Carolinas. Driver #1 returns to Lexington with the other trailer and drops it in the Lexington P&DC yard. He is essentially a relay driver—he transports trailers that are bound for different destinations, but he does not actually transport mail that was processed through the Lexington P&DC.

[3/] Neither party seeks to include this driver in the unit.

The other petitioned-for driver (Driver #2) is assigned to the 405L2 contract. Like Driver #1, he begins his day by retrieving his tractor that is parked at 961 Primrose Court. He reports to work at 3:30 a.m., and after logging into the electronic log system, he bobtails into the Lexington P&DC and proceeds to the docks where he hooks up to a trailer that is loaded with mail that was processed through the Lexington P&DC. He then proceeds to a postal service facility in Indianapolis [4/] where he drops his trailer and then picks up a trailer that he returns to the Lexington P&DC. He operates this route Tuesday through Saturday. On Sundays, he moves an empty trailer from the Lexington P&DC to the Indianapolis STC, has that trailer loaded, and then returns the trailer to the Lexington P&DC.

The six truck drivers sought to be included in the bargaining unit by the Employer begin their routes at the La Quinta Inn located at 1920 Stanton Way in Lexington, 3.1 miles from the Lexington P&DC, and all are assigned to the 274L3 contract. They each begin their route by picking up a loaded trailer that is hauled from the Carolinas to the La Quinta Inn by other employer drivers who are stationed at locations in the Carolinas and not sought to be included in the unit at issue herein. The Carolina drivers take their Department of Transportation (DOT) required 10-hour off-duty break at the La Quinta Inn after dropping off the trailers. While those drivers are taking their required 10-hour break, the six Lexington drivers take and drop off their respective loaded trailer to the Indianapolis STC, pick up another loaded trailer from the Indianapolis STC, and return to the La Quinta Inn with the new loaded trailer. They then hand off the trailer to a Carolina driver who transports it back to the Carolinas.

The six drivers sought to be included by the Employer cover the Lexington to Indianapolis STC route at different times. One operates this route Tuesday through Saturday from 2:45 p.m. to 12:00 a.m. Two drivers operate this route on alternating days from 1 p.m. to 11:15 p.m.—one drives the route on Tuesday through Saturday, and the other, a part-time driver, only drives the route on Sundays. Finally, the remaining three drivers operate a variation of this route, which stops in Cincinnati along the way to the Indianapolis STC. The route begins at 12:30 p.m., and ends at 10 p.m. One of the three drivers drives the route Tuesday through Thursday, one part-time driver covers this route on Saturdays, and the other part-time driver covers it on Sundays.

b. Supervisory hierarchy and departmental organization.

The Employer's truck drivers report to driver managers, also known as fleet managers. [5/] Driver managers oversee approximately 40 to 50 truck drivers at several different locations. Driver managers are assigned to specific truck drivers, partly based on which drivers are assigned to specific contracts. All of the truck drivers who begin their routes at the La Quinta Inn are supervised by Driver Manager Carrie Figgins. One of the petitioned-for drivers reports

[4/] The record does not clearly show whether this is the Indianapolis STC facility or some other postal service facility in Indianapolis.

[5/] The parties stipulated that driver managers are supervisors within the meaning of the Act inasmuch as they have the authority to hire, discharge and/or discipline employees or effectively recommend the same or can responsibly assign employees work and independently direct employees in the performance of their work.

to Driver Manager Domingo Villarreal, III, and the other petitioned-for driver currently reports to Driver Manager Josh Triesenberg. Prior to reporting to Triesenberg, that driver reported to Driver Manager Dwain Winstead.

Driver managers are overseen by operations managers. Each operations manager is responsible for supervising four to six driver managers. Carrie Figgins reports to Operations Manager Robert Langenhuizen; Dwain Winstead reports to Operations Manager Gino Prestia; and Domingo Villarreal, III reports to Operations Manager Jeff Natelborge. The record does not reflect which operations manager directly oversees Josh Triesenberg.

Operation managers report to regional general managers. Regional General Managers Rico Prestia and James Shipp oversee the operations managers involved herein. [6/] The regional general managers report to Chief Operating Officer Tom Crimmins.

The Employer's COO, CEO, and legal department operate centralized control of labor relations for the entire organization. The CEO and COO set wage schedules for all employees, and the COO and the legal department are involved in all aspects of labor relations, including collective bargaining at other unionized locations. According to general testimony from Crimmins, its other unionized locations, some of which have existed for 20 years, are not organized by single postal facilities. Lastly, the Employer has one human resources department that serves the entire company.

c. Wages and other terms and conditions of employment.

All eight Lexington truck drivers, including the two petitioned-for drivers, earn $22.66 per hour pursuant to Department of Labor wage determinations attached to each contract. Wages can also be set by the Employer based on the region where drivers are stationed, in which case the Employer pays the higher of the DOL wage determination rate or the regional wage rate established by the Employer.

Drivers are eligible for Employer-provided benefits if they average more than 30 working hours-per-week and are thus classified as full-time employees. All qualifying drivers have access to the same benefits, including health and prescription benefits, dental and vision insurance, short-term and long-term disability income benefits, life insurance, and others. If a part-time driver moved into a full-time position, they would become eligible for the same benefits as full-time drivers. The tractor trailer job description and hire packet are also the same for all eight drivers, and all drivers are subject to the same employee handbook and employer policies.

By virtue of their day beginning at the Lexington P&DC, the petitioned-for employees have access to the restroom and break rooms at that facility. The two drivers are provided a badge by the Postal Service that allows them to access the facility. Tom Crimmins testified that the other six drivers also have badges because all drivers are required to pass a background check

[6/] The record does not reflect which operations managers report to each regional general manager.

and be badged by the Postal Service. Crimmins testified that it is possible that the drivers who operate from the La Quinta Inn have badges issued at the Lexington P&DC; however, the record does not reflect whether that is actually the case. The record also does not contain any evidence that those six drivers ever access the Lexington P&DC.

According to general testimony provided by Tom Crimmins, if the Employer were to re-bid any of the routes in Lexington, all of its drivers in Lexington – i.e., all of the drivers at issue herein – and only those drivers, would have an opportunity to bid on the route based on the seniority of the drivers. No specific examples of the re-bid process were provided.

d. License and certification requirements.

All eight drivers have identical skills and participate in ongoing employer training. The Employer requires all of its tractor trailer drivers to carry a valid commercial driver's license in their state of residence; have 18 months experience in operation of tractor trailer equipment; be knowledgeable of all applicable DOT requirements and FMCSA Regulations; have the ability to obtain and maintain a postal service badge; and to comply with all DOT requirements regarding drug and alcohol use. As all eight Lexington drivers operate the same type of equipment, they all are subject to the same physical demands associated with driving tractor trailers and hauling mail and freight.

e. Contact amongst the employees and employee interchange.

Both petitioned-for employees testified at the hearing that they communicate with each other on a daily basis and see each other occasionally. Typically, the two drivers speak daily either during the workday or after. The record reflects that in the 1.5 months preceding the hearing, both drivers have shared the same tractor six or seven times because their individual routes overlapped, i.e. one driver returned from his route, and the other used the same truck to begin his route.

There is also some evidence of interchange between the petitioned-for drivers. Driver #1 testified that he has substituted for Driver #2 on that driver's current route on at least two occasions, the last occurring in December 2020, and had also substituted for Driver #2 on his previous route on several occasions, typically to cover vacations, over the prior 3-year period. Driver #2 has not covered Driver #1's newest route, and very rarely covered for that driver on his prior route.

The petitioned-for drivers both testified that they do not recognize the names of the six drivers who begin their route at the La Quinta Inn. One of the petitioned-for drivers also testified that he has never met or spoken to those drivers. Both drivers also testified that they do not know if any of those six drivers have ever covered their routes while they were absent. There is no specific evidence in the record that the petitioned-for drivers have ever substituted on the routes of the six drivers who originate at the La Quinta Inn, nor is there any specific evidence that the six drivers have ever covered the routes of the petitioned-for drivers.

According to general testimony provided by Tom Crimmins, when a truck driver is absent from work, the Employer seeks to cover that driver's route by calling in an employer driver who is off work. [7/] Crimmins testified, however, that he could not say whether any of the drivers beginning at the La Quinta Inn have ever substituted for the petitioned-for drivers or vice versa. If the Employer cannot cover the route with a company driver, it next attempts to fill the vacancy using temporary drivers employed by a contract driving company that will transport the load using a company truck. The last option to cover a vacancy is to broker the load to a third party who will transport the load using their own drivers and equipment.

III. LEGAL STANDARD

The Petitioner is not required to seek a bargaining unit that is the only appropriate unit or even the most appropriate unit. The Act merely requires that the unit sought by the Petitioner be *an* appropriate unit. *Wheeling Island Gaming*, 355 NLRB 637, fn. 2 (2010), citing Overnite *Transp. Co.,* 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.,* 290 NLRB 150 (1988). "The Board's inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends." *The Boeing Company*, 368 NLRB no. 67, slip op. at 3 (2019).

In *PCC Structurals, Inc.*, the Board noted that the examination of what unit is appropriate must take into account "whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from the unit to warrant a separate bargaining unit." *PCC Structurals*, 356 NLRB No. 160 slip op. at 11 (2017). (emphasis in original) There, the Board returned to the traditional community-of-interest standard for determining whether a unit is appropriate, finding that it is the "correct standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees." *Id.* In each case, the Board is required to determine:

> whether the employees are organized into separate departments; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

PCC Structurals, 356 NLRB No. 160 slip op. at 13, citing *United Operations*, *Inc.*, 338 NLRB 123 (2002).

[7/] One petitioned-for driver testified that it was his understanding that the Employer would first try and cover the route of an absent driver by calling part-time drivers.

The Board later clarified in *The Boeing Company*, supra, that the traditional community-of-interest test, as articulated in *PCC Structurals*, involves a three-step analysis:

> First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

The Boeing Company, 368 NLRB no. 67, slip op. at 3. "[T]he traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for employees are too disparate to form a community of interest within the petitioned-for unit." *Id*., citing *Saks & Co.*, 204 NLRB 24, 25 (1973) and *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004). In step two of the analysis, "the Board must determine whether the employees excluded from the unit 'have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members.'" *The Boeing Company*, 368 NLRB no. 67, slip op. at 4. "[W]hat is required is that the Board analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit." *Id*.

IV. ANALYSIS

The Petitioner, citing to *J&L Plate*, 310 NLRB 429 (1993), argues that the employees who operate out of the Lexington P&DC constitute a presumptively appropriate unit under the single-facility presumption, and that the Employer bears the burden of rebutting this presumption. I do not agree that the single-facility presumption applies to this case.

In the trucking industry, the Board has found that single-terminal units are presumptively appropriate. See, *Groendyke Transport, Inc*., 171 NLRB 997, 998 (1968). As detailed below, an analysis of the community-of-interest factors does not support finding that the petitioned-for unit herein constitutes a single facility unit in the traditional sense as the Employer does not maintain a physical building or terminal where the petitioned-for drivers, or the six additional drivers, work and are dispatched. Drivers, in essence, report to their trucks, not a physical terminal or facility operated by the Employer. The petitioned-for drivers report for each shift to a side-street next to the Lexington P&DC, and the six drivers sought to be included by the Employer report to the La Quinta Inn. Notwithstanding the above, even if the single-terminal presumption applied in this case, I would find, weighing the relevant factors, the Employer has rebutted the presumption.

Applying the Board's traditional community-of-interest test, I find for the following reasons that the petitioned-for drivers do not share a community of interest that is sufficiently distinct from the drivers operating out of the La Quinta Inn. Accordingly, I find that the smallest appropriate unit in this case must include those additional six drivers.

a. Step one of the Board's analysis: shared interests within the petitioned-for unit.

To begin with, I find that the petitioned-for drivers share an internal community of interest as required by step one of the Board's analysis in *The Boeing Company*, supra. The job description presented by the Employer applies to both petitioned-for drivers and shows that they are both organized under the Employer's operations department. Accordingly, there is common departmental organization between the petitioned-for drivers.

Furthermore, the petitioned-for drivers share common skills, training, job functions, and work. They are both truck drivers that operate the same equipment, sometimes the exact same truck, to haul mail and freight for the Postal Service, and are required to maintain the same licenses and have the same experience. These factors weigh in favor of finding an internal community of interest.

There is also evidence of interchange, contact between the petitioned-for drivers, and common terms and conditions of employment. The petitioned-for drivers talk, at times while working, on a near daily basis. One of the petitioned-for drivers has substituted for the other petitioned-for driver on multiple occasions. Lastly, the petitioned-for drivers have identical terms and conditions of employment, aside from differences in their routes.

On balance, and based on the foregoing reasons, I find that the petitioned-for employees share an internal community of interest.

b. Step two of the Board's analysis: shared interests between the petitioned-for drivers and the drivers operating out of the La Quinta Inn.

Notwithstanding the initial criteria establishing an internal community of interest, I find that the petitioned-for unit does not share a community of interest sufficiently distinct in the context of collective bargaining from the interests of the excluded drivers. See, *PCC Structurals*, supra, and *The Boeing Company*, supra.

1. Departmental organization

All truck drivers employed by the Employer, including all eight drivers stationed in Lexington, are subject to the same tractor trailer driver job description. According to the job description, all tractor trailer drivers fall within the Employer's operations department. Thus, there is common departmental organization among the eight drivers employed in Lexington. I find that this factor weighs in favor of finding that the two petitioned-for drivers do not share sufficiently distinct interests in the context of collective bargaining that outweigh similarities with the excluded drivers.

2. Distinct skills and training

This factor examines whether disputed employees can be distinguished from one another based on duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that disputed employees must meet similar requirements to obtain employment, that they have similar job descriptions or licensure requirements, that they participate in the same employer training programs, or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Serv.*, 313 NLRB 657 (1994).

All eight drivers have identical skills and training. The Employer requires all of its tractor trailer drivers to carry a valid commercial drivers license in their state of residence; have 18 months experience in operation of tractor trailer equipment; be knowledgeable of all applicable DOT requirements and FMCSA Regulations; have the ability to obtain and maintain a postal service badge; and must comply with all DOT requirements regarding drug and alcohol use. Additionally, all Lexington drivers operate the same type of equipment, use the same electronic log system, are subject to the same physical demands, and participate in the same employer trainings.

Based on the foregoing facts, I find that this factor weighs heavily in favor of finding that the petitioned-for drivers do not share sufficiently distinct interests in the context of collective bargaining that outweigh similarities with the excluded drivers.

3. Distinct job functions and the performance of distinct work, including inquiry into the amount and type of job overlap between classifications

This factor examines whether the disputed employees can be distinguished from one another based on job functions. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. *Casino Aztar*, 349 NLRB 603.

All eight tractor trailer drivers in Lexington perform the same job function. They operate tractor trailers to haul mail and freight for the Postal Service. One petitioned-for driver operates a route to Indianapolis, the same destination city for all six drivers that operate out of the La Quinta Inn. Furthermore, the second petitioned-for driver hauls mail and freight that did not originate at his pickup location—the mail and freight he hauls is not processed at the Lexington P&DC—which is the same for the six drivers that operate out of the La Quinta Inn. It is true that all eight drivers either operate different routes or have different route schedules, but that is also true between the two petitioned-for drivers. Thus, I do not afford any weight to the different in routes and schedules.

Consequently, I find that all eight Lexington drivers cannot be distinguished from one another on the basis of job functions and work. Accordingly, I find that this factor weighs in favor of finding that the petitioned-for drivers do not share sufficiently distinct interests in the context of collective bargaining that outweigh similarities with the excluded drivers.

4. Functional integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. For example, functional integration exists when all of the employees in the sought-after unit work on different phases of the same product or a single service as a group. *Arvey Corp*., 170 NLRB 35 (1968); *Transerv Sys*., 311 NLRB 766 (1993). Another example of functional integration is when the Employer's workflow involves all employees in the sought-after unit. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Sys*., supra.

All eight drivers operate independently of each other. There is no evidence that any of the eight Lexington drivers operate routes together or operate in tandem or caravan while in separate trucks. Even those drivers that are assigned to the same contract begin their runs at different times, and on different days. While the drivers are performing the same work, use the same type of equipment, and may begin their shifts at the same locations as others, they all operate independently from one another.

Given the foregoing, there is little evidence of functional integration. However, I do not afford this factor much weight. Finding that there is no evidence of functional integration between the petitioned-for unit and the excluded drivers necessarily requires a finding that there is no functional integration among any of the drivers. In other words, if I were to find that the petitioned-for unit has meaningfully distinct interests from the excluded drivers due to the lack of functional integration, such finding could lead to the conclusion that no two drivers belong in the same unit, as none of the drivers are functionally integrated with any others. As the Board does not permit single employee units, all eight drivers would then be unable to exercise Section 7 rights to representation.

Accordingly, while I recognize that there is no evidence of functional integration between the petitioned-for unit and the excluded drivers, for the above-cited reasons, I find this factor neutral because there is no evidence of functional integration amongst any of the drivers, and thus not dispositive.

5. Contact

There is also no evidence of contact between the petitioned-for drivers and the drivers operating from the La Quinta Inn. One petitioned-for driver testified that he did not recognize the names of any of the drivers operating from the La Quinta Inn. The second petitioned-for driver testified that he has never met or spoken to any of the other six drivers. None of the six

drivers operating from the La Quinta Inn testified at the hearing, and there is no evidence that any of those individuals have contact with the petitioned-for drivers.

Conversely, there is record evidence that the petitioned-for drivers speak to each other on a near daily basis and see each other at the Lexington P&DC occasionally. Indeed, one petitioned-for driver testified that he has driven the same tractor trailer as the second petitioned-for driver on six or seven occasions recently, and each time has seen and spoken to the other driver. Based on these facts, I find this factor weighs in favor of finding that the petitioned-for drivers have sufficiently distinct interests in the context of collective bargaining that outweigh similarities with the excluded drivers.

6. Interchange

The record contains limited evidence of interchangeability, both within the petitioned-for unit, and amongst all eight drivers. Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp*., 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community-of-interest sufficient to justify their inclusion in a single bargaining unit. *Executive Res. Assoc*., 301 NLRB 400, 401 (1991) (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981)). Also, relevant for consideration of interchangeability is whether there are permanent transfers among employees in the unit sought by a union. However, the existence of permanent transfers is not as important as evidence of temporary interchange. *Hilton Hotel Corp*, 287 NLRB at 359.

There is limited evidence of interchange between the petitioned-for drivers. According to the testimony of one petitioned-for driver, he has substituted for the second petitioned-for driver on his route twice since the second driver started his new route, the latest example occurring in December 2020. [8/] The second petitioned-for driver testified that he has very rarely substituted for the first.

Moreover, according to general testimony from Tom Crimmins, the Employer seeks to cover any Lexington driver vacancies by first calling other Lexington drivers who are not scheduled to work that day. No specific examples of any Lexington driver covering the route of another Lexington driver were proffered by the Employer. The petitioned-for drivers both testified that they do not know who covers their route when they are absent from work. Neither were asked whether they have ever covered one of the routes that begins at the La Quinta Inn; still, there is no evidence on the record that they have.

Given the limited evidence of interchange between the petitioned-for drivers, and no specific evidence of interchange between the petitioned-for drivers and the drivers that operate out of the La Quinta Inn, I find that this factor weighs slightly in favor of finding that the

[8/] The record does not reflect when that driver began his new route.

petitioned-for drivers have sufficiently distinct interests in the context of collective bargaining that outweigh similarities with the excluded drivers. I afford this factor limited weight because there is only limited evidence of interchange between the petitioned-for drivers.

7. Terms and conditions of employment

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. See, e.g., *Overnite Trans. Co*., 322 NLRB 347, 349 (1996).

I find that the terms and conditions of employment shared by all eight drivers are nearly identical. All eight drivers earn the same wage rate, based on a Department of Labor area wage determination, or regional wages set by the Employer, unique to the Lexington market. All full-time drivers in Lexington have access to the same fringe benefits. For any drivers not eligible for benefits, the determining factor is their weekly hours worked, not their starting location. Further, all eight drivers are subject to the same job description, must maintain the same licenses and have the same experience, and are subject to the same hire packet, handbook, and employer policies. While the two petitioned-for employees have badges that allow them to access the Lexington P&DC, and there is no evidence that the excluded drivers access that facility, there is only limited evidence that the petitioned-for drivers actually use the facility.

Based on the facts discussed above, I find that this factor weighs heavily in favor of finding that the petitioned-for drivers do not share sufficiently distinct interests in the context of collective bargaining that outweigh similarities with the excluded drivers.

8. Supervision

The petitioned-for drivers each report to a different driver manager, who in turn reports to a different operations manager. The excluded drivers report to the same driver manager, who reports to an operations manager that is not one of the two that the petitioned-for drivers report to. The three operations managers report to one of two regional general managers, who both report to the COO. Thus, there is no common supervision between the two petitioned-for drivers, nor between those drivers and the six excluded drivers, until either the third or fourth level in the Employer's managerial hierarchy.

Because the excluded drivers share common supervision, I find this factor weighs slightly in favor of finding that the excluded employees have sufficiently distinct interests in the context of collective bargaining that outweigh similarities with the petitioned-for drivers. I only accord this factor limited weight, however, because the petitioned-for drivers, who the Petitioner argues have a community-of-interest meaningfully distinct from the excluded drivers, do not share common supervision. Thus, the fact that the excluded drivers do not share common supervision with either of the petitioned-for drivers is of little value given the same is true among the petitioned-for drivers.

For the foregoing reasons, I find, on balance, that step two of the Board's, *The Boeing Company*, supra, analysis requires a determination that the excluded drivers should be included in an appropriate unit with petitioned-for drivers. Specifically, the overwhelming evidence of common departmental organization, identical skills, training, job functions, work and terms and conditions of employment outweighs any differences in supervision and the lack of functional integration, interchange, and contact.

c. Step three of the Board's analysis: Board decisions on similar units within the same industry

The Board has had occasion to establish many bright-line rules within the trucking industry, none of which apply to the instant matter. For example, the Board has found that single-terminal units are presumptively appropriate; local drivers and over-the-road drivers constitute separate appropriate units in certain circumstances; driver-salesperson are excluded from units of plant employees; and others. The issue presented here, however, is whether employees who report to separate locations within the same city, neither of which is an employer-operated facility or terminal, are appropriately included in the same unit and/or whether a presumption applies. While not dispositive, I find instructive the testimony of Tom Crimmins that the Employer's unionized locations, some of which have been in existence for 20 years, are not organized by single postal facilities.

On balance, I find that step three of the Board's analysis neither favors, nor disfavors, finding that the petitioned-for drivers share sufficiently distinct interests in the context of collective bargaining that outweigh similarities with the excluded drivers.

In sum, having conducted the Board's required three step analysis, I find that the drivers in the petitioned-for unit do not share a community of interest sufficiently distinct in the context of collective bargaining from the interests of the six excluded drivers. I find, then, that the smallest appropriate unit in this case must include the six drivers operating from the La Quinta Inn. [9/] Accordingly, I am directing an election to include all eight Lexington tractor trailer drivers, in accordance with the directions that follow.

[9/] Even if the facts of this case were analyzed under the Board's single-facility presumption, I would find that the Employer has rebutted that presumption. To determine whether the presumption has been rebutted, the Board examines factors such as central control over daily operations and labor relations, similarity of employee skills, functions, and working conditions, the degree of employee interchange, the distance between locations, and bargaining history, if any. *J&L Plate*, 310 NLRB 429 (1993). The evidence reflects that upper management enters into contractual relationships with the Postal Service, thereby setting the daily routes that drivers will operate, and labor relations for the entire company are controlled by the COO, the legal department, and one human resource department. All tractor trailer drivers in Lexington have the same skills, functions, and working conditions. While there is limited evidence of employee interchange, the starting locations for all drivers are within the Lexington city limits and only 3 miles apart. Finally, even though there is no evidence of a bargaining history amongst the Lexington drivers, there is record evidence that other employer units are not organized by single postal facilities. On these facts, if this case were analyzed under the Board's single-facility presumption, I would find that the Employer has sufficiently rebutted that presumption.

CONCLUSIONS AND FINDINGS

Based upon the foregoing and the entire record in this matter, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. [10]/

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer.

5. No collective-bargaining agreement covers the employees in the petitioned-for unit, and no other bar exists to conducting an election.

6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

7. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time tractor trailer drivers employed by the Employer and stationed in Lexington, Kentucky; but excluding all other employees, office clerical employees, professional employees, guards, directors, managers, and supervisors as defined in the Act.

DIRECTION OF ELECTION

In on-record discussions, the Petitioner represented that it wished to proceed to an election in any unit of drivers found appropriate. Accordingly, the National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate herein, conditioned on the Petitioner having or making an adequate showing of interest in the

[10]/ The parties stipulated in Board Exhibit 2, and I find, that the Employer is a Delaware limited liability corporation engaged in providing interstate transportation of freight under contract with the U.S. Postal Service, including from Lexington, Kentucky. In conducting its operations during the most recent 12-month period, a representative period, the Employer derived gross annual revenue in excess of $50,000 from such operations.

unit as directed. [11]/ Conditioned on the Petitioner's providing Region 9 with an adequate showing of interest in the enlarged unit, **within 5 business days after the issuance of this Decision**, [12]/ employees will vote whether or not they wish to be represented for purposes of collective bargaining by the **International Brotherhood of Teamsters Local 651.**

A. Election Details

Conditioned on the Petitioner providing an adequate showing of interest in the enlarged unit, I have determined that a mail ballot election will be held. The parties disagree over the mechanics of this election—the Employer seeks a manual election to be held at the La Quinta Inn, and the Petitioner seeks a mail ballot election. Mail balloting may be used in certain circumstances, such as where the eligible voters are scattered because of their duties or work schedules. In such situations, I may conduct an election by mail ballot, taking into consideration the desires of the parties, the ability of voters to understand mail ballots, and the efficient use of personnel. *San Diego Gas & Electric*, 325 NLRB 1143 (1998).

I find that a mail ballot election is appropriate pursuant to the Board's traditional factors for mail ballot elections. The drivers here have scattered work schedules and have scattered work locations, in this case routes. Moreover, the Employer does not have a facility in Lexington – rather drivers report to their trucks, not any facility or terminal. For these reasons, a mail ballot election is warranted under the Board's traditional factors.

I further find that a mail ballot election is appropriate given the ongoing pandemic and the Employer's inability to meet the requirements of GC Memorandum 20-10 ("GC 20-10). As the Employer does not own or operate the proposed manual election location—the La Quinta Inn—the Employer necessarily cannot make the required certifications to comport with GC 20-10. Accordingly, factor four of the Board's *Aspirus Keweenaw* [13]/ pandemic mail ballot test is satisfied, thus supporting a mail ballot election. Additionally, the reported rise in highly contagious Covid-19 variants further supports directing a mail ballot election, especially one that

[11]/ When the Regional Director or the Board issues a Decision and Direction of Election in a unit larger than that requested by the Petitioner, and the Petitioner or an Intervenor has indicated its willingness to participate in such an election, further processing of the petition is conditioned on the Petitioner or an Intervenor having an adequate showing of interest in the enlarged unit. If the Petitioner or an Intervenor does not have a sufficient showing of interest, the direction of election is conditioned on the Petitioner or an Intervenor making an adequate showing of interest in the unit as directed. The Petitioner or an Intervenor may be given a reasonable period of time to secure the additional showing of interest after the issuance of the Decision and Direction of Election, or such further time as the Regional Director may allow based on sufficient justification. See, NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11031.1.

[12]/ According to NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11031.1, Regional Directors are ordinarily directed to give petitioners and intervenors 2 business days to furnish the requisite showing. In this case, unit employees are over-the-road drivers with different schedules and routes. Given the nature of the work, I find it appropriate to afford the Petitioner 5 business days to present its showing in the enlarged unit.

[13]/ 370 NLRB No. 45 (2020).

would take place at an uncontrolled environment frequented by an unknown number of members of the public.

In the event the Petitioner provides an adequate showing of interest in the enlarged unit, the mechanics of the mail ballot election will be specified in a Notice of Election that will issue shortly after this Decision. If the election is postponed or canceled, I may, in my discretion, reschedule the date, time, place, and manner of election. [14]/

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **March 20, 2021**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties **within two business days of written notification to the Employer of an obligation to serve the voter list.** [15]/ Such written notification will issue upon the Petitioner demonstrating an adequate showing of interest. The voter list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

[14]/ The Petitioner has not waived any portion of its allotted 10-day period with the voter list prior to the election commencing.

[15]/ See, NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11312.1(d).

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election which will be issued after this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review in this case may be filed with the Board at any time following the issuance of this Decision until **10 business days** after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: March 23, 2021

Matthew T. Denholm, Regional Director
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